



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

GROVETON TEACHERS ASSOCIATION, :
NEA-NEW HAMPSHIRE :
:
and :
:
NORTHUMBERLAND SCHOOL BOARD :
AND CHARLES MICCICHE, IN HIS :
CAPACITY AS SUPERINTENDENT, :
S.A.U. 58 :

CASE NO. T-0268:2

DECISION NO. 83-33

APPEARANCES

Representing Groveton Teachers Association, NEA/N.H.
John Fessenden, UniServ Director, Region V, NEA/N.H.

Representing Northumberland School Board
Charles Micciche, Superintendent

BACKGROUND

The parties, by mutual agreement, came before a hearing officer for a declaratory judgment on the validity of the maternity leave (Article XI) section of their collective bargaining agreement.

The collective bargaining agreement has two articles pertinent to paid leave:

- (a) Article IX, Leaves of Absence, Section A, deals with sick leave for illness or physical disability and establishes only one limiting criteria for paid sick leave due to illness or disability, i.e., "...provided he does not use more than the number of days he is eligible to accumulate by the end of the year."
- (b) Article XI, Maternity Leave, imposes conditions and terms on employees for leave benefits due to pregnancy, childbirth or related medical conditions. The conditions I identify are:
1. Two prior notices.
 2. Written approval from the attending physician, certifying good health.
 3. School Board's right to request additional certificates.
 4. Superintendent's authority to commence leave.
 5. Limitation of 21 days sick leave and the time period sick leave can be used in.
 6. Differentiation between normal pregnancy and disability due to complications in pregnancy.
 7. Requirement for medical evidence of disability as a result of pregnancy.

8. Limiting the amount of potential sick leave to that which has previously been accrued.
9. Mandatory return to the district for eligibility for sick leave benefits.
10. A suggested 30-day filing period for sick leave benefits upon return to work.
11. Requirement for a physician's certificate to return to duty.
12. Discretion of the school board to delay return to work up to 30 days.
13. Conditions for reassignment upon return to work.
14. Expression of resignation for failure to return from leave at its expiration.

FINDINGS OF FACT

Title VII of the Civil Rights Act as amended by P.L. 95-555 on October 31, 1978, Section 701 (k) states "...women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment related purposes, including the receipt of benefits under fringe benefit programs, as other persons not so affected by similar in their ability or inability to work..."

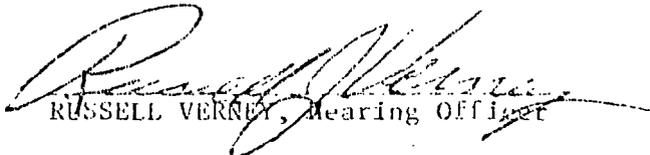
Interpretive questions and answers on P.L. 95-555, the "Pregnancy Discrimination Act," were issued by the Equal Employment Opportunities Commission as an appendix to its Sex Discrimination Guidelines (29 CFR 1604.10), 44FR 1196 (March 2, 1979 effective March 9, 1979).

DECISION

Inasmuch as none of the terms and conditions under Article XI Maternity Leave apply to persons not pregnant but with similar ability or inability to work, they are inconsistent with the provisions of Title VII of the Civil Rights Act (Section 701 (k)) and as such invalid no later than April 29, 1979.

Therefore, an employee denied maternity leave on the basis of the provision of Article XI, Maternity Leave, is contrary to law.

The employee in this case must be paid sick or physical disability leave benefits consistent with Article IX, Leaves of Absence, Section A, and afforded the same benefits as any other employee not pregnant but similar in their ability or inability to work.


RUSSELL VERNET, Hearing Officer

Signed this 15th day of July, 1983